CF0000062697

IN THE HIGH COURT OF JUDICATURE OF MADHYA PRADESH AT:JABALPUR

Criminal Appeal No. 1539 of 1999.

APPELLANT : Budharu Aged about-35years,
(IN JAIL) S/o Baratoo, resident of-Bardha,
P.S.-Balouda Bazar, Distt.Raipur.

VERSUS

RESPONDENT: State of M.P. through-Station House Officer,
P.S.-Balouda Bazar, Distt.Raipur.

4/6/99
Jain
Advocate

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CORDE OF CRIMINAL PROCEDURE:

(19)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 1533/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

10-1-2006

Smt. Usha Chandrakar, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral Judgment.

1. By this appeal accused Budharu has questioned the legality of the judgment of conviction and order of sentence dated 9-3-99 passed by the 1st Additional Sessions Judge, Baloda Bazar, District Raipur in S.T. No.453/94 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Mahendra Kumar, convicted him under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year.

2. Brief facts necessary for the disposal of this appeal are that Mevalal Satnami, son of Mahendra Kumar lodged the report Ex.-P/13 in the police station Baloda Bazar to the effect that yesterday evening i.e. on 7-9-94 he and his father were returning after purchasing grocery items from Tilak Verma's shop. When they reached near the house of Budharu Satnami, Budharu came

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

with a wooden club and after blocking their passage, he said to his father that 'you have grabbed Rs.10,000/-', started assaulting with the club on his father's right hand, back, shoulder, he repeatedly assaulted 9-10 times, as a result of which his father received injuries on the head. Blood started oozing out of it. His father fell down on the ground and died spontaneously. On receiving this report, S.H.O. police station registered the crime under Sections 307 and 341 of the I.P.C., crime No.250/94, left for the scene of occurrence and after giving notice (Ex.-P/11) to the Panchas, prepared Panchanama (Ex.-P/12) of the dead body of the deceased. He took into possession the clothes of the accused under Ex.-P/5. The weapon of offence i.e. club was taken into possession under Ex.-P/4 from the possession of Budharu. The blood stained soil and plain soil were taken into possession from the place of occurrence under Ex.-P/3. The clothes of the deceased were taken into possession under Ex.-P/1. The blood stained wooden club and other clothes were sent for examination under Ex-P/20. The reports of the F.S.L., Raipur and serologist Ex.-P/22 and P/-24 respectively were received.

3. The dead body of the deceased was sent for postmortem examination to the Community Health Centre, Baloda Bazar where Dr. K.S. Bajpaee conducted the postmortem on the dead body of Mahendra Kumar and he opined that the deceased died on account

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of shock as a result of head injury. After completion of the investigation, charge sheet was filed in the Court of A.C. J.M., Baloda Bazar who in turn committed the case to the Sessions Judge, Raipur from where the 1st Additional Sessions Judge, Baloda bazaar received the case on transfer for trial.

4. The prosecution in order to establish the charge against the accused examined 20 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

5. We have heard learned counsel for the parties.

6. Learned counsel for the accused/appellant did not dispute the fact of homicidal nature of death of the deceased. Apart from that, Dr. K.S. Bajpaee (PW-19), who conducted postmortem on the body of the deceased, has stated that on 9-9-94 he conducted postmortem on the body of the deceased. There was lacerated injury on the left parietal region in the size of 3 x 0.5 cm deep up to the skin. The bone beneath the injury was fractured. The cause of death was head injury and excessive haemorrhage. His

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report is Ex.-P/23. PW-2 Janak Ram Satnami has stated that accused Budharu attacked the deceased with a Lathi, at that time, the accused said that he has committed murder, 'what you are going to do'. PW-3 Chintaram has corroborated the above evidence and stated that Budharu murdered Mahendra. Therefore, in view of the above ocular evidence and the medical evidence, it is established that the death of the deceased was homicidal in nature.

7. Now, coming to the involvement of the accused in crime in question, learned counsel for the accused/appellant argued that evidence of PW-2 Janak Ram Satnami and PW-3 Chintaram is not worth reliance and the acoused has been wrongly convicted. PW-2 Janak Ram Satnami has stated that on the fateful day at about 6-7 p.m. in the evening the deceased and his son Mevalal were going towards their house from the shop of Tilak Ram, from the other side Budharu came carrying a club in his hand and he heard the cries from behind that 'I have died'. He saw that Budharu was attacking the deceased with a Lathi on which he raised the cries. On raising the cries, Chintaram came on the scene. Budharu while standing on the door of his house said that he has committed murder, 'what you are going to do'. PW-3 Chintaram has corroborated the above evidence and stated that he saw that Budharu was attacking the deceased, the deceased fell down on

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the earth, became unconscious and blood was oozing out of injury. Thereafter, Budharu left for his house. PW-8 Manharan has stated that Mevalal raised the cries that Budharu has murdered Mahendra. When he went towards that side, Mahendra was lying in front of the house of the accused. On enquiry, the deceased asked him to save his life. The accused was standing in front of his house and Mahendra said that Budharu has assaulted him. Thereafter, he was taken to the hospital. Therefore, evidence of eyewitnesses namely PW-2 Janak Ram Satnami and PW-3 Chintaram is corroborated by the evidence of PW-8 Manharan who has stated that Mahendra made oral dying declaration before him. The evidence of these witnesses stands corroborated by the evidence of Dr. Bajpaee PW-19 who has stated that he conducted postmortem on the body of the deceased and he found that there was a lacerated wound on the left parietal region in the size of 3x 0.5 cm, bone beneath the above injury was found fractured and the death of the deceased was on account of head injury. The weapon of offence i.e. club was taken into possession under Ex.-P/4, same was stained with blood and it was sent for examination to the F.S.L. from where it was sent to the serologist. As per the serologist's report Ex.-P/24 (item No.50) Acacia stick was found stained with human blood. Therefore, the above evidence also stands corroborated by the serologist's report that the accused

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used club in question in assaulting the deceased. In view of the above evidence of eyewitnesses, dying declaration, extra judicial confession and medical report, it is established that the accused was the author of the crime in question.

8. Learned counsel for the accused/appellant argued that from the evidence it is not established that the accused attacked the deceased with the intention to cause his death. As per the medical report there was only one serious injury on the head and the said injury was caused with the club, therefore, the offence against the accused does not travel beyond Section 304-II of the I.P.C.

9. On the other hand, Shri U.N.S. Deo supported the judgment of the trial Court.

10. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the medical and ocular evidence. PW-2 Janak Ram Satnami and PW-3 Chintaram have stated that the deceased was going from Tilak Ram's shop to his house, when he reached in front of the house of Budharu, he assaulted the deceased with the wooden club on his head. As per the medical report, on account of that injury parietal bone was fractured and the deceased died. Therefore, from the above evidence, it appears that the accused assaulted the deceased all

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of a sudden, without any pre-meditation and in a heat of passion saying that Mahendra had grabbed Rs.10,000/-. Even doctor has not stated that injury in question was sufficient in the ordinary course of nature to cause the death. However, from the facts, it is established that while assaulting the deceased with wooden club the accused was having knowledge that causing injury with the wooden club, he may likely to cause the death of the deceased. Therefore, in view of the above, we are of the opinion that the offence against the accused/appellant does not travel beyond Section 304-II of the I.P.C.

11. In the result, the appeal is partly allowed. The conviction under Section 302 of the I.P.C. and sentence awarded under that section are set aside, instead thereof, the accused/appellant is convicted under Section 304-II of the I.P.C. and sentenced to undergo R.I. for 10 years. The accused/appellant is in custody since 9-9-94, thereby he is in custody for the last more than 11 years, therefore, if the accused/appellant is not required in any other case, he be released forthwith.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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